

House Bill 327 (AS PASSED HOUSE AND SENATE)

By: Representatives Williams of the 178th, Roberts of the 154th, Lane of the 167th, Keen of the 179th, May of the 111th, and others

A BILL TO BE ENTITLED

AN ACT

To amend Article 7 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to setoff debt collection, so as to authorize a setoff of certain debts owed to public housing authorities; to change certain provisions relating to definitions; to provide for procedures, conditions, and limitations; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 7 of Chapter 7 of Title 48 of the Official Code of Georgia Annotated, relating to setoff debt collection, is amended in Code Section 48-7-161 relating to definitions relative to the setoff of debt collection, by revising paragraph (1) as follows:

"(1) 'Claimant agency' means and includes, in the order of priority set forth below:

(A) The Department of Human Resources with respect to collection of debts under Chapter 9 of Title 37, Article 1 of Chapter 11 of Title 19, and Code Section 49-4-15;

(B) The Georgia Student Finance Authority with respect to the collection of debts arising under Part 3 of Article 7 of Chapter 3 of Title 20;

(C) The Georgia Higher Education Assistance Corporation with respect to the collection of debts arising under Part 2 of Article 7 of Chapter 3 of Title 20;

(D) The State Medical Education Board with respect to the collection of debts arising under Part 6 of Article 7 of Chapter 3 of Title 20;

(E) The Department of Labor with respect to the collection of debts arising under Code Sections 34-8-254 and 34-8-255 and Article 5 of Chapter 8 of Title 34, with the exception of Code Sections 34-8-158 through 34-8-161; provided, however, that the Department of Labor establishes that the debtor has been afforded required due process rights by such Department of Labor with respect to the debt and all reasonable collection efforts have been exhausted;

(F) The Department of Corrections with respect to probation fees arising under Code Section 42-8-34 and restitution or reparation ordered by a court as a part of the sentence imposed on a person convicted of a crime who is in the legal custody of the department;

(G) The State Board of Pardons and Paroles with respect to restitution imposed on a person convicted of a crime and subject to the jurisdiction of the board; ~~and~~

(H) The Department of Juvenile Justice with respect to restitution imposed on a juvenile for a delinquent act which would constitute a crime if committed by an adult; and

(I) Public housing authorities with respect to the collection of debt related to occupying public housing; provided, however, that the public housing authority establishes that the debtor has been afforded required due process rights by the public housing authority with respect to the debt and all reasonable collection efforts have been exhausted. This subparagraph shall apply only to a debt owed by an occupant of public housing who has moved from the property."

SECTION 2.

Said article is further amended by adding a new Code section to read as follows:

"48-7-171.

(a) Except as otherwise provided in this Code section, all procedures and requirements of this article shall apply with respect to public housing authorities.

(b) Public housing authorities may submit for collection under the procedure established by this Code section all delinquent debts which they are owed.

(c) All public housing authorities, whenever possible, shall obtain the full name, social security number, address, and any other identifying information, required by regulations promulgated by the department for implementation of this Code section, from any person for whom the public housing authorities provide any service or transact any business and who the public housing authorities can foresee may become a debtor under the terms of this Code section.

(d) A debtor who protests the debt shall file a written protest with the claimant agency at the address provided in the public housing authority's notification of intention to set off. The protest must be filed within 30 days of the date of the notice of intention to set off and must contain the debtor's name, address, and tax identification number, identify the type of debt in dispute, and give a detailed statement of all the reasons that support the protest. The requirements of this subsection are jurisdictional.

(e) To recover costs incurred by the department pursuant to this subsection, an administrative fee, not to exceed \$25.00, shall be added to the debt by the public housing authority.

(f) Before submitting a debt to the department, the public housing authority shall appoint a hearing officer to hear a protest of a debtor. This hearing officer is vested with the authority to decide a protest in favor of either the debtor or the public housing authority.

1 The public housing authority shall certify to the department, on a form prescribed by the
2 department, that a hearing officer has been appointed and shall inform the department of
3 the name, address, and telephone number of the hearing officer. If this hearing officer is
4 unable to serve at any time, the public housing authority shall appoint another hearing
5 officer.

6 (g) Upon receipt of a notice of protest, the public housing authority shall notify the
7 department that a protest has been received and shall hold an informal hearing at which the
8 debtor may present evidence, documents, and testimony to dispute the debt. The public
9 housing authority shall notify the debtor of the date, time, and location of the informal
10 hearing. At the conclusion of the informal hearing the officer shall render his or her
11 determination. Upon receipt of a sworn certification from the hearing officer that he or she
12 held an informal hearing and ruled in favor of the public housing authority, the department
13 may proceed to collect the delinquent debt regardless of a subsequent appeal by the debtor.

14 (h) A debtor may seek relief from the hearing officer's determination by requesting, within
15 30 days of the determination, a contested case hearing before an administrative law judge.
16 A request for a hearing before an administrative law judge must be made in accordance
17 with the rules of said judges.

18 (i) If a portion of the delinquent debt is collected by the department and the determination
19 of the hearing officer in favor of the public housing authority is later reversed or the debtor
20 prevails in a claim for refund, the public housing authority shall refund the appropriate
21 amount to the taxpayer, including the appropriate amount of the fee. That portion of the
22 refund reflecting the department's fee must be paid from public housing authority funds.
23 If the public housing authority is found to be entitled to a portion of an amount collected
24 by set off, it is not required to refund the setoff fee retained by the department.

25 (j) If a refund is retained in error, the public housing authority shall pay to the taxpayer
26 interest calculated as provided in Code Section 48-2-35 from the date provided by law after
27 which interest is paid on refunds until the appeal is final.

28 (k) If the public housing authority determines that money has been erroneously or illegally
29 collected, the public housing authority, in its discretion, may issue a refund, even if the
30 debtor does not file a protest or file a claim for refund.

31 (l) A collection may not be contested more than one year after the date it was made. The
32 date of collection must be conclusively determined by the department. This provision shall
33 be construed as a statute of repose and not as a statute of limitation.

34 (m) A debtor may make a claim for refund of an amount collected pursuant to this Code
35 section within one year from the date the amount is collected, in the same manner as
36 seeking relief from a hearing officer's determination pursuant to this Code section.

(n) This Code section does not create a right to jury trial where one does not already exist. When a debtor otherwise is entitled to have a jury determine the issue of indebtedness, that right is preserved specifically. If a right to a jury trial already exists and the debtor wishes to exercise that right, the debtor is not required to request a contested case hearing before an administrative law judge but instead must file in the appropriate superior court and serve the pleadings on the public housing authority within 30 days from the date of the hearing officer's determination. The complaint must name the public housing authority as a defendant and the allegations of the complaint must contest the debt and any potential setoff.

(o) Public housing authorities shall indemnify the department against any injuries, actions, liabilities, or proceedings arising from performance under the provisions of this Code section."

SECTION 3.

All laws and parts of laws in conflict with this Act are repealed.